

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/05-01/08

Date: 23 June 2016

TRIAL CHAMBER III

Before: Judge Sylvia Steiner, Presiding Judge
Judge Joyce Aluoch
Judge Kuniko Ozaki

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
*v. JEAN-PIERRE BEMBA GOMBO***

Public Redacted Version of

“Partly Dissenting Opinion of Judge Ozaki on the Decision on the ‘Prosecution’s Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute’ (ICC-01/05-01/08-2868)”, ICC-01/05-01/08-2981-Conf-AnxA of 17 February 2014

Decision to be notified, in accordance with regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda
Mr Jean-Jacques Badibanga

Counsel for the Defence

Mr Peter Haynes
Ms Kate Gibson
Ms Melinda Taylor

Legal Representatives of the Victims

Ms Marie-Edith Douzima Lawson

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

**The Office of Public Counsel for the
Defence**

Mr Xavier-Jean Keïta

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

1. This partly dissenting opinion is in response to the Majority's admission into evidence of five items in the "Decision on the 'Prosecution's Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute' (ICC-01/05-01/08-2868)" ("Decision") and addresses the reasons underlying my disagreement with the Majority on the admission of these items.
2. The prosecution requests the admission of three media articles, CAR-OTP-0013-0051, CAR-OTP-0013-0082, and CAR-OTP-0013-0320. According to the prosecution, CAR-OTP-0013-0051 is a press article reporting on the reaction of Bangui residents to the presence of ALC troops in Bangui;¹ CAR-OTP-0013-0082 is a press article providing a chronology of the events that took place in the CAR from 25 October 2002, including reports on the presence of and alleged crimes committed by ALC troops;² and CAR-OTP-0013-0320 is a press article containing allegations of the commission of crimes by ALC troops.³ I disagree with the Majority's reasoning for admitting these articles.
3. As I have stated in previous opinions, the admission of newspaper articles and other media reports into evidence must be approached with great care when their authors are not called to testify at trial.⁴ That the content of such articles may serve to corroborate other pieces of evidence is a factor to be assessed in considering their reliability and probative value but is insufficient to warrant

¹ See Decision, paragraph 16 (internal citation omitted).

² See Decision, paragraph 23 (internal citation omitted).

³ See Decision, paragraph 33 (internal citation omitted).

⁴ Partly Dissenting Opinion of Judge Ozaki on the Prosecution's Application for Admission of Materials into Evidence Pursuant to Article 69(4) of the Rome Statute, 6 September 2012, ICC-01/05-01/08-2300, paragraphs 3 to 10; Partly Dissenting Opinion of Judge Ozaki on the Decision on the admission into evidence of items deferred in the Chamber's 'Decision on the Prosecution's Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute' (ICC-01/05-01/08-2299), 27 June 2013, ICC-01/05-01/08-2721-Anx, paragraphs 5 to 6; Partly Dissenting Opinion of Judge Ozaki on the Third Decision on the prosecution and defence requests for the admission of evidence, 6 November 2013, ICC-01/05-01/08-2864-Conf-Anx, paragraphs 7 to 9; Partly Dissenting Opinion of Judge Ozaki on the Decision on Maître Douzima's "Requête de la Représentante légale de victimes en vue de soumettre des documents en tant qu'éléments de preuve selon l'article 64(9) du Statut de Rome", ICC-01/05-01/08-2950-Conf-Anx, paragraphs 2 to 3.

admission.⁵ In the present circumstances, I am of the view that the probative value of the press articles is insufficient to outweigh the potential prejudice if they are admitted to corroborate other pieces of evidence.

4. Regarding CAR-OTP-0013-0082 specifically, the Majority seeks to admit this article to, *inter alia*, “contextualise and facilitate the Chamber’s assessment of the testimony of those witnesses to whom it was shown”.⁶ I observe that Witnesses [REDACTED], D04-06, D04-54, and D04-13 were questioned about this article during their testimonies before the Chamber and either claimed not to have knowledge of the information contained therein or contradicted its content.⁷ As such, the Chamber should be able to rely on the court’s records of the witnesses’ in-court testimonies to evaluate potential contradictions.
5. I do not object to the admission of CAR-OTP-0013-0051, CAR-OTP-0013-0082, and CAR-OTP-0013-0320 solely for the limited purpose of demonstrating that the events described in these articles were widely reported.
6. The prosecution also requests the admission of CAR-OTP-0004-0874, which it submits is a press statement issued by the former Prime Minister of CAR and Deputy of the National Assembly, Jean-Paul Ngoupande. I disagree with the Majority’s reasoning for admitting this document.⁸ I agree with the Majority’s decision to treat this article similarly to media articles.⁹ Thus, in light of my views expressed above and in previous dissents, I object to the document’s admission to contextualise or facilitate a witness’s testimony or to corroborate other pieces of evidence. I do not object to the document’s admission to show that the events described therein were widely reported.

⁵ ICC-01/05-01/08-2950-Conf-Anx, paragraph 2.

⁶ Decision, paragraph 32.

⁷ See Decision, paragraph 29.

⁸ See Decision, paragraphs 48-55.

⁹ See Decision, paragraph 55.

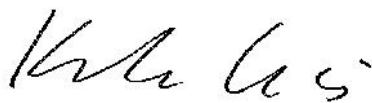
7. Finally, the prosecution requests the admission of CAR-OTP-0013-0012, which it submits is a press release from *Le Confident* containing information about crimes committed by MLC troops in the CAR.¹⁰ I disagree with the Majority's reasoning for admitting this document.¹¹
8. I note that the CAR-OTP-0013-0012 appears to be a single page of a press publication containing one *Lettre ouverte* and an article entitled "*La FIDH et la LCDH condamnent les exactions commises à Bangui*". The *Lettre ouverte* appears to be an open letter authored by *Centrafrique Sans Frontières*, a non-governmental organisation ("NGO"). The article reports on statements made by two NGOs, International Federation for Human Rights ("FIDH") and *Ligue Centrafrique des Droits de l'Homme* ("LCDH"), regarding crimes committed by rebel and loyalist forces and appears to be sourced to "AFP". Although CAR-OTP-0013-0012 involves statements made by NGOs, in light of the nature of the document, I concur with the Majority's decision to treat it similarly to media articles.¹² As such, in light of my views expressed above and in previous dissents, I object to the document's admission to contextualise or facilitate a witness's testimony or to corroborate other pieces of evidence. I do not object to the document's admission to show that the events described therein were widely reported.
9. For the reasons articulated above, I disagree with the reasoning offered by the Majority with regard to the admission of documents CAR-OTP-0013-0051, CAR-OTP-0013-0082, CAR-OTP-0013-0320, CAR-OTP-0004-0874, and CAR-OTP-0013-0012.

¹⁰ See Decision, paragraph 56 (internal citation omitted).

¹¹ See Decision, paragraphs 56-63.

¹² See Decision, paragraph 62-63.

Done in both English and French, the English version being authoritative.



Judge Kuniko Ozaki

Dated this 23 June 2016

At The Hague, the Netherlands